

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the repeal of §80.271.

The proposed repeal was published in the December 25, 2015, issue of the *Texas Register* (40 TexReg 9494).

Background and Summary of the Factual Basis for the Adopted Rule

This rulemaking is adopted to implement Senate Bill (SB) 1267 adopted by the 84th Texas Legislature (2015), with an effective date of September 1, 2015. SB 1267 amends the Texas Administrative Procedure Act (APA), codified in Texas Government Code, Chapter 2001, which is applicable to all state agencies. SB 1267 revises and creates numerous requirements related to notice of contested case hearings (CCHs) and agency decisions, signature and timeliness of agency decisions, presumption of the date that notice of an agency decision is received, motions for rehearing regarding agency decisions, and the procedures for judicial review of agency decisions. Rulemaking implementing SB 1267, Sections 4, 6, 7, and 9 was adopted by the commission on December 9, 2015, in 30 Texas Administrative Code (TAC) Chapter 1, Purpose of Rules, General Provisions; Chapter 50, Action on Applications and Other Authorizations; Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment; Chapter 70, Enforcement; and Chapter 80, Contested Case Hearings (Rule Project No. 2015-018-080-LS). The applicable rule, §80.272, was amended by the

commission on December 9, 2015, and applies to motions for rehearing for CCHs regarding permit applications.

In corresponding rulemaking published in this issue of the *Texas Register*, the commission adopts the amendments to §35.29 and §55.255, which will complete the rulemaking necessary to implement SB 1267.

Section Discussion

Section 80.271 is adopted for repeal because the changes adopted by the commission on December 9, 2015, to §80.272 make §80.271 obsolete.

Final Regulatory Impact Analysis Determination

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in that statute. A "major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted repeal of §80.271 is not specifically intended to protect

the environment or reduce risks to human health from environmental exposure. Rather, §80.271 is obsolete.

The rulemaking is procedural in nature and does not affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

As defined in the Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking action does not meet any of these four applicability requirements of a "major environmental rule." Specifically, the adopted repeal of §80.271 is necessary to complete the implementation of SB 1267 by removing an obsolete rule. The repealed rule, §80.271, is procedural in nature and does not directly impact the cost of CCHs. This adopted rulemaking action does not exceed an express requirement of state law or a requirement of a delegation agreement, and was not developed solely under the general powers of the agency, but was specifically developed to meet the requirements of

the law described in the Statutory Authority section of this rulemaking.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. No comments were received on the regulatory impact analysis determination.

Takings Impact Assessment

The commission evaluated the adopted rulemaking and performed an assessment of whether Texas Government Code, Chapter 2007, is applicable. The primary purpose of the adopted rulemaking is to repeal an obsolete rule, §80.271. This is necessary to complete the implementation of SB 1267. Section 80.271 is procedural in nature and does not directly impact the cost of CCHs. Promulgation and enforcement of the adopted rulemaking will not burden private real property. The adopted repeal of §80.271 does not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Consequently, this rulemaking action does not meet the definition of a taking under Texas Government Code, §2007.002(5).

Consistency with the Coastal Management Program

The commission reviewed the adopted repeal of §80.271 and found that it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or

(4), nor will the repeal affect any action or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the adopted rule repeal is not subject to the Texas Coastal Management Program (CMP).

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received on the CMP.

Public Comment

The commission held a public hearing on January 26, 2016. The comment period closed on January 29, 2016. The commission received no comments on the proposed rulemaking.

SUBCHAPTER F: POST HEARING PROCEDURES
§80.271

Statutory Authority

The repeal is adopted under Texas Water Code (TWC), §5.013, concerning General Jurisdiction of Commission, which establishes the general jurisdiction of the commission; TWC, §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; and TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission. Additional relevant sections are Texas Government Code, §2001.004, concerning Requirement to Adopt Rules of Practice and Index Rules, Orders, and Decisions, which requires state agencies to adopt procedural rules; and Texas Government Code, §2001.006, concerning Actions Preparatory to Implementation of Statute or Rule, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; Texas Government Code, §2001.142, concerning Notification of Decisions and Orders, which prescribes requirements for the notification of decisions and orders of a state agency; Texas Government Code, §2001.143, concerning Time of Decision, which concerns when a decision in a contested case becomes final; Texas Government Code, §2001.144, concerning Decisions or Orders; When Final, which provides the time at which

decisions in contested cases are final; and Texas Government Code, §2001.146, concerning Motions for Rehearing: Procedures, which authorizes the procedures for motions for rehearing filed with state agencies.

The adopted repeal implements Texas Government Code, §2001.004, and Senate Bill 1267 (84th Texas Legislature, 2015).

[§80.271. Motion for Rehearing.]

[(a) Any decision in an administrative hearing before the commission that occurs before September 1, 1999 is subject to this section.]

[(b) Filing motion. A motion for rehearing is a prerequisite to appeal. The motion shall be filed with the chief clerk within 20 days after the date the party or his attorney of record is notified of the decision or order. For purposes of this section, a party or attorney of record is presumed to have been notified on the third day after the date that the decision or order is mailed by first-class mail. On or before the date of filing of a motion for rehearing, a copy of the motion shall be mailed or delivered to all parties with certification of service furnished to the commission. The motion shall contain:]

[(1) the name and representative capacity of the person filing the motion;]

[(2) the style and official docket number assigned by SOAH, and official docket number assigned by the commission;]

[(3) the date of the decision or order; and]

[(4) a concise statement of each allegation of error.]

[(c) Reply to motion for rehearing. A reply to a motion for rehearing must be filed with the chief clerk within 30 days after the date a party or his attorney of record is notified of the decision or order.]

[(d) Ruling on motion for rehearing.]

[(1) Upon the request of the general counsel or a commissioner, the motion for rehearing will be scheduled for consideration during a commission meeting. Unless the commission extends time or rules on the motion for rehearing within 45 days after the date the party or his attorney of record is notified of the decision or order, the motion is overruled by operation of law.]

[(2) A motion for rehearing may be granted in whole or in part. When a motion for rehearing is granted, the decision or order is nullified. The commission may reopen the hearing to the extent it deems necessary. Thereafter, the commission shall render a decision or order as required by this subchapter.]

[(e) Extension of time limits. With the agreement of the parties or on their own motion, the commission or the general counsel may, by written order, extend the period of time for filing motions for rehearing and replies and for taking action on the motions so long as the period for taking agency action is not extended beyond 90 days after the date the party is notified of the decision or order.]

[(f) Motion overruled. In the event of an extension, the motion for rehearing is overruled by operation of law on the date fixed by the order, or in the absence of a fixed date, 90 days after the date the party is notified of the decision or order.]